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EXAMINER	
VETTER, DANIEL	
ART UNIT	PAPER NUMBER
3628	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/20/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/630,432	DOSANJH, RAJ	
	Examiner	Art Unit	
	Daniel P. Vetter	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-24 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 29 July 2003 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 07/29/2003.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-24 are pending in this application.

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings were received on July 29, 2003. These drawings are accepted by Examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 1 recites the limitation "the nature of growth" in line 3. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 2 contains the same deficiencies as claim 1 through dependency and, as such, is rejected for the same reasons.

7. Claim 3 recites the limitation "if the usage monitoring indicates that the customer has a need for more or less of the commodity" in lines 1-2. The metes and bounds of the claim are indefinite because the claim does not state what the scope of the claim includes if the other branch of the alternative does not occur, i.e. if the usage monitoring does not indicate that the customer has a need for more or less of the commodity. Additionally, claim 3 contains the same deficiencies as claim 1 through dependency and, as such, is rejected for the same reasons.

8. Claims 4-5 contain the same deficiencies as claim 1 through dependency and, as such, are rejected for the same reasons.

9. Claim 6 recites the limitation "the same category of commodity" in line 3. There is insufficient antecedent basis for this limitation in the claim. Additionally, claim 6 contains the same deficiencies as claim 1 through dependency and, as such, is rejected for the same reasons.

10. Claim 7 recites the limitation "the category of commodity" in line 1. There is insufficient antecedent basis for this limitation in the claim. Additionally, claim 7 contains the same deficiencies as claims 1 and 6 through dependency and, as such, is rejected for the same reasons.

11. Claims 8-11 contain the same deficiencies as claim 1 through dependency and, as such, are rejected for the same reasons.

12. Claim 12 recites the limitation "the nature of growth" in line 3. There is insufficient antecedent basis for this limitation in the claim.

13. Claim 13 contains the same deficiencies as claim 12 through dependency and, as such, is rejected for the same reasons.

14. Claim 14 recites the limitation "if the usage monitoring indicates that the customer has a need for more or less of the commodity" in lines 1-2. The metes and bounds of the claim are indefinite because the claim does not state what the scope of the claim includes if the other branch of the alternative does not occur, i.e. if the usage monitoring does not indicate that the customer has a need for more or less of the commodity. Additionally, claim 14 contains the same deficiencies as claim 12 through dependency and, as such, is rejected for the same reasons.

15. Claims 15-16 contain the same deficiencies as claim 12 through dependency and, as such, are rejected for the same reasons.

16. Claim 17 recites the limitation "the same category of commodity" in line 3. There is insufficient antecedent basis for this limitation in the claim.
Additionally, claim 17 contains the same deficiencies as claim 12 through dependency and, as such, is rejected for the same reasons.

17. Claim 18 recites the limitation "the category of commodity" in line 1. There is insufficient antecedent basis for this limitation in the claim. Additionally, Claim 18

contains the same deficiencies as claims 12 and 17 through dependency and, as such, is rejected for the same reasons.

18. Claims 19-21 contain the same deficiencies as claim 12 through dependency and, as such, are rejected for the same reasons.

19. Claim 22 recites the limitation "the nature of growth" in line 4. There is insufficient antecedent basis for this limitation in the claim.

20. Claim 23 recites the limitation "the nature of growth" in line 4. There is insufficient antecedent basis for this limitation in the claim.

21. Claim 24 recites the limitation "the nature of growth" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

22. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

23. Claims 1-2 and 4-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

24. Claim 1 is directed toward a method. Claim 1 is therefore purported to be a process within the context of § 101. However the invention embodied in the claim only contains steps for calculating a price for a commodity. This is a mathematical formula

which is a mere abstract idea, and therefore falls within one of the judicial exceptions to patentability. In order for an abstract idea to be patent eligible, the limitations of the claim must set forth a practical application. A practical application results if the claimed invention transforms an article or physical object to a different state or thing; or if the claimed invention produces a useful, concrete, and tangible result. No transformation occurs, so any patentability of the claimed invention must be drawn from the existence of a useful, concrete, and tangible result. The method of claim 1 does not produce a tangible result because the result is merely determining a price, which is nothing more than a thought or a computation within a processor and therefore does not produce a "real-world" result. Accordingly, claim 1 is rejected as being directed to non-statutory subject matter.

25. Dependent claims 2 and 4-11 further limit how the price is determined and what commodity is being analyzed in a particular environment, but do not add a tangible result. Therefore, claims 2 and 4-11 are also directed toward non-statutory subject matter for the reasons described above. Claim 3 adds the useful, concrete, and tangible result of providing more or less of the commodity to the customer and is therefore directed to statutory subject matter.

26. Claims 12-21 are directed to a computer program. Software *per se* is not one of the recognized statutory classes of invention recognized by § 101.

27. Additionally, claim 12 is directed toward non-statutory subject matter for the same reasons as claim 1 above. Dependent claims 13 and 15-21 further limit how the price is determined and what commodity is being analyzed in a particular environment, but do not add a tangible result. Therefore, claims 2 and 4-11 are also directed toward non-statutory subject matter for the same reasons described above for claims 2 and 4-11. Claim 14 adds the useful, concrete, and tangible result of providing more or less of the commodity to the customer therefore would be directed to statutory subject matter if it were not merely software *per se*.

Claim 22 is directed toward a computer program being stored on a data carrier. A "data carrier" is not given a specific definition in the specification. A person having ordinary skill in the art would interpret this to include not only a disc or memory drive, but also media such as a carrier wave signal. Such a signal is not a process, machine, article of manufacture, or composition of matter, and is therefore not recognized as eligible for patenting under § 101. Accordingly, Examiner interprets claim 22 as reasonably encompassing non-statutory subject matter.

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

> the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

29. Claims 1-7, 11-18, and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takriti, U.S. Pat. No. 6,021,402 (Reference A of the attached PTO-892) in view of Pitchford, et al., U.S. Pat. No. 6,327,541 (Reference B of the attached PTO-892).

30. As per claim 1, Takriti teaches a method of determining a price at which a supplier provides a commodity to a customer, the method being performed by the supplier and comprising: characterising the nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receiving information from the customer specifying the commodity required (column 7, lines 65-67); and determining a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time of determination of the price (column 5, lines 2-3). Takriti does not explicitly teach receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford, et al. teaches receiving notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is

dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the method taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

31. As per claim 2, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Pitchford, et al. further teaches that the step of receiving notification of the use of a quantity of the commodity further comprises monitoring the customer's usage of the commodity (column 3, line 8). It would have been prima facie obvious to incorporate monitoring the customer's usage of the commodity into the method taught by Takriti in view of Pitchford, et al. in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

32. As per claim 3, Takriti in view of Pitchford, et al. teaches the method of claim 2 as described above. Pitchford, et al. further teaches if the usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the

customer (column 5, lines 11-14). It would have been prima facie obvious to incorporate if the usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer into the method taught by Takriti in view of Pitchford, et al. in order to meet the particular requirements of a particular user site (as taught by Pitchford, et al., column 5, line 12).

33. As per claim 4, Takriti in view of Pitchford, et al. teaches the method of claim 2 as described above. Takriti further teaches the customer's usage history of the commodity, as monitored by the supplier, is used to dynamically reassess the nature of growth of the customer's usage of the commodity (column 7, lines 59-60). The limitation "and hence the associated level of commercial risk" is merely a statement of intended result and is afforded no patentable weight.

34. As per claim 5, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Takriti teaches that the nature of growth of the customer's usage of the commodity is characterised (column 7, lines 59-60) and that a level of commercial risk is determined (column 8, line 53). However, Takriti in view of Pitchford, et al. does not teach that the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate. These characterizations and levels are merely recitations of non-functional descriptive

material. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate into the method taught by Takriti in view of Pitchford, et al. because non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. *In re Gulack*, 703 F.2d 1381, 1385; 217 USPQ 401, 404 (Fed. Cir. 1983).

35. As per claim 6, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Takriti further teaches in the step of receiving information from the customer specifying the commodity required, the commodity is selected from a plurality of alternatives in the same category of commodity (column 8, line 49; Examiner is interpreting types of fuel as alternatives within the same category of the commodity electricity).

36. As per claim 7, Takriti in view of Pitchford, et al. teaches the method of claim 6 as described above. Pitchford, et al. further teaches the category of commodity is one of a plurality of categories and a selection is made from more than one category (column 7, lines 15-20), and wherein the alternatives available for selection in each category are modified in response to customer's preference data, or on the basis of previously-selected commodities (column 5, lines 2-4; column 6, lines 56-61). It would have been

prima facie obvious at the time of invention to incorporate the category of commodity is one of a plurality of categories and a selection is made from more than one category, and wherein the alternatives available for selection in each category are modified in response to customer's preference data, or on the basis of previously-selected commodities into the method taught by Takriti in view of Pitchford, et al. in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

37. As per claim 11, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Takriti further teaches the method is executed using a computer program (Abstract).

38. As per claim 12, Takriti teaches a computer program (Abstract) operable to determine a price at which a supplier provides a commodity to a customer, the computer program being operable to: receive input characterising the nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receive input specifying the commodity required by the customer (column 7, lines 65-67); and determine a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry

average price for the commodity at the time (column 5, lines 2-3). Takriti does not explicitly teach that the program is operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford, et al. teaches that the program is operable to receive input comprising notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate that the program is operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the program taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

39. As per claim 13, Takriti in view of Pitchford, et al. teaches the program of claim 12 as described above. Pitchford, et al. further teaches the program operable to receive data from a remote device specifying the usage of the commodity by the customer (column 5, lines 15-20). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the program operable to receive

data from a remote device specifying the usage of the commodity by the customer into the program taught by Takriti in view of Pitchford, et al. in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

40. As per claim 14, Takriti in view of Pitchford, et al. teaches the program of claim 13 as described above. Pitchford, et al. further teaches if the usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer (column 5, lines 11-14). It would have been prima facie obvious to incorporate if the usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer into the program taught by Takriti in view of Pitchford, et al. in order to meet the particular requirements of a particular user site (as taught by Pitchford, et al., column 5, line 12).

41. As per claim 15, Takriti in view of Pitchford, et al. teaches the program of claim 13 as described above. Takriti further teaches the program operable to interpret the customer's usage history of the commodity to dynamically reassess the nature of growth of the customer's usage of the commodity, and hence the associated level of commercial risk (column 7, lines 59-60). The limitation "and hence the associated level

of commercial risk" is merely a statement of intended result and is afforded no patentable weight.

42. As per claim 16, Takriti in view of Pitchford, et al. teaches the program of claim 12 as described above. Takriti teaches that the nature of growth of the customer's usage of the commodity is characterised (column 7, lines 59-60) and that a level of commercial risk is determined (column 8, line 53). However, Takriti in view of Pitchford, et al. does not teach that the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate. These characterizations and levels are merely recitations of non-functional descriptive material. It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the characterizations are constant growth, explosive growth or volatile growth and that the level of commercial risk is low, high or intermediate into the program taught by Takriti in view of Pitchford, et al. because non-functional descriptive material cannot render non-obvious an invention that would otherwise have been obvious. *Gulack*, 217 USPQ at 404.

43. As per claim 17, Takriti in view of Pitchford, et al. teaches the program of claim 12 as described above. Takriti further teaches when receiving input specifying the commodity required by the customer, the commodity is selected from a plurality of alternatives in the same category of commodity (column 8, line 49; Examiner is

interpreting types of fuel as alternatives within the same category of the commodity electricity).

44. As per claim 18, Takriti in view of Pitchford, et al. teaches the program of claim 17 as described above. Pitchford, et al. further teaches the category of commodity is one of a plurality of categories and a user makes a selection from more than one category (column 7, lines 15-20), and wherein the computer program modifies the alternatives available for selection in each category following input of customer preference data, or on the basis of previously-selected commodities (column 5, lines 2-4; column 6, lines 56-61). It would have been prima facie obvious at the time of invention to incorporate the category of commodity is one of a plurality of categories and a user makes a selection from more than one category, and wherein the computer program modifies the alternatives available for selection in each category following input of customer preference data, or on the basis of previously-selected commodities into the program taught by Takriti in view of Pitchford, et al. in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

45. As per claim 22, Takriti teaches a computer program (Abstract) operable to determine a price at which a supplier provides a commodity to a customer, the computer program being stored on a data carrier (column 8, line 29) and operable to:

receive input characterising the nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receive input specifying the commodity required by the customer (column 7, lines 65-67); and determine a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time (column 5, lines 2-3). Takriti does not explicitly teach receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford, et al. teaches receive input comprising notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the program taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

46. As per claim 23, Takriti teaches a price determination device comprising a processor (Abstract) operable to implement a method of determining a price at which a supplier provides a commodity to a customer, the method comprising: characterising the nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receiving information from the customer specifying the commodity required (column 7, lines 65-67); and determining a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time of determination of the price (column 5, lines 2-3). Takriti does not explicitly teach receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford, et al. teaches receiving notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate receiving notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the device taught by Takriti in order to provide an energy management system that provides data in terms of consumption,

demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

47. As per claim 24, Takriti teaches price determination device comprising a processor (Abstract) executing a program to determine a price at which a supplier provides a commodity to a customer, the program being operable to cause the processor to: receive input characterising the nature of growth of the customer's usage of the commodity (column 7, lines 59-60); receive input specifying the commodity required by the customer (column 7, lines 65-67); and determine a price for the commodity used (column 7, lines 30-31), the determined price being dependent on a level of commercial risk associated with the nature of growth of the customer's usage of the commodity (column 8, lines 60-62), and an industry average price for the commodity at the time (column 5, lines 2-3). Takriti does not explicitly teach the device operable to receive input comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used. Pitchford, et al. teaches the device operable to receive input comprising notification of the use of a quantity of the commodity by the customer (column 3, lines 7-11), and that the determined price is dependent on the quantity of the commodity used (column 10, line 26). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the device operable to receive input

comprising notification of the use of a quantity of the commodity by the customer, and that the determined price is dependent on the quantity of the commodity used into the device taught by Takriti in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

48. Claims 8-10 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takriti in view of Pitchford, et al. as applied to claims 1 and 12 above, and further in view of Official Notice.

49. As per claim 8, Takriti in view of Pitchford, et al. teaches the method of claim 1 as described above. Takriti in view of Pitchford, et al. does not teach that the commodity price determination is done in the information technology industry. Official Notice is taken that it is old and well established that the information technology industry uses various commodities, such as power and processor availability (see e.g., *Call for Participation: Seventh Workshop on Hot Topics in Operating Systems*, Reference U of the attached PTO-892; hereinafter "HotOS-VII"). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to have incorporated that the commodity price determination is done in the information technology industry into the method taught by Takriti in view of Pitchford, et al. because

the information technology industry uses various commodities which must be priced by their suppliers.

50. As per claim 9, Takriti in view of Pitchford, et al. and Official Notice teaches the method of claim 8 as described above. Takriti in view of Pitchford, et al. does not teach the categories of commodities include storage capacity, server processing capability, and level of support service required. Official Notice is taken that it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to have incorporated that the categories of commodities include storage capacity, server processing capability, and level of support service required into the method taught by Takriti in view of Pitchford, et al. and Official Notice because they are some of the main inputs into computers and computer networks, which are the backbone of the information technology industry.

51. As per claim 10, Takriti in view of Pitchford, et al. and Official Notice teaches the method of claim 9 as described above. Official Notice teaches the commodities of storage capacity or server processing capability as described above. Pitchford, et al. further teaches the step of receiving notification of the use of a quantity of the commodity is performed using monitoring and reporting software or hardware installed

on a server of the customer (column 6, lines 35-45). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate receiving notification of the use of a quantity of the commodity is performed using monitoring and reporting software or hardware installed on a server of the customer into the method taught by Takriti in view of Pitchford, et al. and Official Notice in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

52. As per claim 19, Takriti in view of Pitchford, et al. teaches the program of claim 12 as described above. Takriti in view of Pitchford, et al. does not teach that the commodity price determination is done in the information technology industry. Official Notice is taken that it is old and well established that the information technology industry uses various commodities, such as power and processor availability (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to have incorporated that the commodity price determination is done in the information technology industry into the program taught by Takriti in view of Pitchford, et al. because the information technology industry uses various commodities which must be priced by their suppliers.

53. As per claim 20, Takriti in view of Pitchford, et al. and Official Notice teaches the program of claim 19 as described above. Takriti in view of Pitchford, et al. does not teach the categories of commodities include storage capacity, server processing capability, and level of support service required. Official Notice is taken that it is old and well established that the information technology industry uses the commodities of storage capacity, server processing capability, and support service (see e.g., HotOS-VII). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to have incorporated that the categories of commodities include storage capacity, server processing capability, and level of support service required into the program taught by Takriti in view of Pitchford, et al. and Official Notice because they are some of the main inputs into computers and computer networks, which are the backbone of the information technology industry.

54. As per claim 21, Takriti in view of Pitchford, et al. and Official Notice teaches the program of claim 19 as described above. Pitchford, et al. further teaches the data specifying the usage of the commodity by the customer is supplied from monitoring software or hardware installed on a server of the customer (column 6, lines 35-45). It would have been prima facie obvious to one having ordinary skill in the art at the time of invention to incorporate the data specifying the usage of the commodity by the customer is supplied from monitoring software or hardware installed on a server of the customer

into the method taught by Takriti in view of Pitchford, et al. and Official Notice in order to provide an energy management system that provides data in terms of consumption, demand, cost per rate of consumption, or total cost (as taught by Pitchford, et al., column 2, lines 65-67).

Conclusion

55. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Halpern, U.S. Pat. No. 5,301,122 (Reference C of the attached PTO-892) teaches a system for monitoring power usage of various devices at remote facilities which sensors at each facility to sense the on/off condition of the devices and wherein a processor at each facility, under the control of a host computer at a central location, stores the output data of the sensors in stripped-down form. McNamara, et al., U.S. Pat. No. 5,528,507 (Reference D of the attached PTO-892) teaches a system for electric power demand monitoring and control includes one or more data distribution networks interconnecting intelligent utility units located at customer homes with a host computer located in the utility company offices. Hoffman, U.S. Pat. Pub. No. 2003/0014299 (Reference E of the attached PTO-892) teaches a system, method and computer program product for pricing in a supply chain management framework wherein data is collected from a plurality of supply chain participants utilizing a network. Harper, U.S. Pat. Pub. No. 2003/0023466 (Reference F of the attached PTO-892)

teaches a decision support system and method for use in making decisions related to supplying and purchasing electrical power wherein a forecasting and planning model provides forecasting services related to energy based upon historical and current real-time data for use in other models. Smith, et al., U.S. Pat. No. 6,785,592 (Reference G of the attached PTO-892) teaches a business methodology for optimizing energy procurement energy demand (usage) and energy supply for a facility or complex wherein after ascertaining a baseline model, energy consumption is monitored and adjusted to reflect dynamic economic factors of operations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P. Vetter whose telephone number is (571) 270-1366. The examiner can normally be reached on Monday through Thursday from 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Nolan can be reached on (571) 272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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